


**Department of Human Resources
Social Services Administration
311 W. Saratoga St.
Baltimore, MD 21201**

DATE: January 15, 2015

POLICY #: SSA-CW # 15-9

TO: Directors, Local Departments of Social Services
Assistant Directors, Services

FROM: 
Deborah Ramelmeier, Acting Executive Director
Social Services Administration

RE: Waiver of Reunification

PROGRAMS AFFECTED: Out-of-Home Placement

ORIGINATING OFFICE: Out-of-Home Placement

ACTION REQUIRED OF: All Local Departments

REQUIRED ACTION: Implement Policy and Procedures

ACTION DUE: February 1, 2015

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PURPOSE:

The purpose of this policy directive is to provide guidelines to the Local Departments of Social Services (LDSS) on requesting a waiver of reunification services. A waiver of reunification allows the LDSS to waive reunification services to one or both parents of a child who enters out-of-home placement. **A waiver of reunification can only be granted by the court.** This policy directive will provide a step-by-step instruction on how the LDSS shall screen cases and on when it should file for a waiver of reunification.

BACKGROUND:

The Adoption and Safe Families Act of 1997 ("ASFA") made significant changes to child welfare law in response to two significant concerns: (1) children were languishing in foster care for years while local departments engaged in excessive, but futile, efforts to achieve reunification with hopelessly dysfunctional families and (2) children were being reunited with parents when it was not safe to do so in the name of reasonable efforts. To address this growing concern, ASFA permitted states to seek a waiver of the requirement that it make reasonable efforts towards reunification if "aggravated circumstances" existed. ASFA left it to the state legislatures to define "aggravated circumstances," which could include, *but need not be limited to*, abandonment, torture, chronic abuse, and sexual abuse.

In 1998, in response to the ASFA waiver requirements, the Maryland General Assembly passed legislation permitting a local department to seek a waiver of reunification efforts under specified circumstances Md. Code Ann., Cts. & Jud. Proc. § 3-812.

While the LDSS is vested with the discretion of whether to seek a waiver, Section 3-812(d) provides that a juvenile court "shall waive the requirement that reasonable efforts be made to reunify the child with the child's parent" if there is clear and convincing evidence that one of the specified circumstances exist. Once there is clear and convincing evidence of one of the specified circumstances, the juvenile court "shall" grant the Department's request to waive its obligation to make reasonable efforts toward reunification. Cts. & Jud. Proc. 3-812(d). The Court of Special Appeals recently clarified that the "shall" language makes the juvenile court's granting of the LDSS's waiver request mandatory. *In re Joy D.*, 216 Md. app. 58 (2014).

ACTION:**Waiver Eligibility**

Reunification is the desired outcome for the first 15 months of a child entering out-of-home placement. If a parent or guardian, however, meets the criteria for waiver of reunification services, the caseworker shall consider requesting a waiver through the juvenile court. The LDSS shall make an assessment that the waiver is not contrary to the best interest of the child. Each parent or guardian individually must meet the criteria in order to request a waiver for that particular parent or guardian. The waiver can be requested for one parent and not the other or for both parents when both meet the criteria. **The local department may consider petitioning the court for a waiver of reunification if any of the following circumstances exists:**

- The parent or guardian has subjected the child to torture, chronic or sexual abuse, or chronic and life-threatening neglect;
- The parent or guardian has been convicted of a crime of violence, as defined in Criminal Law Article, §14-101, Annotated Code of Maryland, against :
 - The child,
 - The other parent of the child, or
 - Another child of the parent.
- The parent or guardian has been convicted of aiding or abetting, conspiring, or soliciting a crime of violence against one of the above-named individuals.
- The parent has involuntarily lost parental rights of a sibling of the child.

Process to Request Waiver

The LDSS shall petition the court for a waiver of reunification services within 30 days of the CINA hearing or anytime after CINA if the LDSS becomes knowledgeable that the parent(s) meet the criteria of a waiver, subject to the exceptions set forth in the next section. The LDSS shall also take into consideration filing a petition if another party requests the LDSS to file a petition and provides evidence to support the petition. The LDSS will have knowledge if the child meets any of the eligibility requirements of the waiver if the nature of the abuse or neglect is the reason the child entered out-of-home placement. Many times the parent(s) have prior history that the LDSS is not knowledgeable of in order to determine if the child is eligible for the waiver. The LDSS shall complete the following to determine if the parent(s) may meet the criteria for filing a waiver of reunification:

- **Prior to consideration of filing the petition the LDSS shall assess the best interest of the child and the current situation of the parent.**
- MD CHESSIE search on both parents to determine any prior Child Protective Services cases to determine if the parent(s) were the alleged maltreater and if the abuse or neglect meets the criteria for a waiver. Review any out-of-home placement records to determine if the parent(s) involuntarily lost parental rights to any children. If a parent(s) has involuntarily lost parental rights to a sibling in the jurisdiction, another jurisdiction in Maryland, or in another state, the LDSS may move forward with petitioning the court for a waiver of reunification services. The LDSS shall request a copy of the termination of parental rights order from the other jurisdiction to ensure that the parental rights were involuntarily lost.
- When a child enters out-of-home placement, the LDSS shall check Maryland Judiciary Case Search, <http://casesearch.courts.state.md.us> for any violent crime history of each parent or legal guardian. If the parent has been convicted of a crime of violence, as defined in Criminal Law 14-101, against the child, the other parent of the child, or another child, a waiver of reunification services shall be requested.

Exception of Filing Waiver

The LDSS may elect not to file a waiver of reunification services in extenuating circumstances when the waiver is contrary to the child's best interest. The LDSS must make a clinical determination that a waiver is not in the best interest of the child. Only under exceptional circumstance shall the LDSS make the decision not to file a petition for a parent(s). The LDSS child welfare program staff has the sole discretion in determining if a waiver of reunification shall be filed. **It is important when making this decision that the parent(s) desires reunification and is able to be reunified with the child.** The LDSS must assess the safety and risk of the child if returned to the parent and determine if services offered would remedy the factors that led to removal and placement in out-of-home care. The following are examples of situations when the LDSS may determine filing a waiver is not in the child's best interest:

- A court involuntarily terminated a parent's rights to a sibling a significant number of years ago, but at this time the LDSS determines that the parent could be safely reunified with the current child. The factors that led to the involuntary TPR have been resolved.
- A parent was convicted of a crime of violence against a parent of the child however this occurred many years ago and parent has resolved the issue that caused the act. Such as, if the parent was a substance abuser at the time of the crime of violence and can show documentation that the parent has been through treatment and is currently substance free. The LDSS must also be able to make the determination that the child would not be at risk if reunification was achieved.